

*** NOT FOR PUBLICATION ***

NO. 26500

IN THE SUPREME COURT OF THE STATE OF HAWAII

HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and
body corporate and politic, Plaintiff-Appellant

vs.

1974 LIMITED PARTNERSHIP, a Hawaii limited partnership; and DALE
BAKER FERGUSON, Defendants-Appellees

and

NORMA ELIZABETH BURNER; RAY FRANKLIN BURNER; ROSE LORAIN
FERGUSON; JOSEPH S.K. KEANE; MIRIAM M.K. KEANE; SAMSON P. LOW;
VERNICA L. LOW; JANET SACHIKO TANAHARA; RUSSELL TAMIO TANAHARA;
BLOSSOM DAISY TONG; VERNON RANDOLPH WAHILANI TONG; BARNABY S.K.
YOU; ROBERTA M.H. YOU, (Herbert M.D. You and Diana M.Y. You,
Sellers under Agreement of Sale); JOHN DOES 1-200; MARY DOES 1-
200; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE "NON-
PROFIT" CORPORATIONS 1-50; and DOE ENTITIES 1-50, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 94-3869)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Acoba, J., dissenting)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the December 3, 2003 motion for reconsideration of the December 1, 2003 order awarding abandonment damages extended the time for appealing the December 1, 2003 order until thirty days after entry of an order disposing of the motion for reconsideration. HRAP 4(a)(3). An order denying the motion was entered on March 18, 2004, but the order was not entered within the ninety-day maximum period prescribed by HRAP 4(a)(3) for disposing of the motion. Therefore, the December 3, 2003 motion was denied by operation of law on March 2, 2004, ninety days after the motion was filed. HRAP 4(a)(3). The denial of the motion by operation of law on March 2, 2004

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triggered the thirty-day period for appealing the December 1, 2003 order. HRAP 4(a)(3). The April 7, 2004 notice of appeal was filed more than thirty days after March 2, 2004 and is an untimely appeal of the December 1, 2003 order.

It further appears that the circuit court extended the time for appealing the December 1, 2003 order pursuant to HRAP 4(a)(4)(B), but the extension order was entered after the record on appeal was filed in the supreme court on June 7, 2004 and the record on appeal was not supplemented with the extension order. Even so, the circuit court abused its discretion in extending the time for appeal inasmuch as appellant's misreading of the ninety-day provision of HRAP 4(a)(3) was not a plausible misconstruction of the rule, but a failure to read and comply with the plain language of HRAP 4(a)(3) that did not constitute excusable neglect for purposes of HRAP 4(a)(4)(B). See Hall v. Hall, 95 Hawaii 318, 320, 22 P.3d 965, 967 (2001). The April 7, notice of appeal being untimely, we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (the failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 12, 2004.